

AMENDED IN ASSEMBLY AUGUST 12, 2004

AMENDED IN ASSEMBLY JULY 8, 2003

AMENDED IN SENATE MARCH 27, 2003

SENATE BILL

No. 131

Introduced by Senator Sher
(Coauthor: Assembly Member Koretz)

February 5, 2003

An act to amend Section 11357 of the Health and Safety Code, and to amend Section 23222 of the Vehicle Code, relating to controlled substances.

LEGISLATIVE COUNSEL'S DIGEST

SB 131, as amended, Sher. Marijuana: possession: penalty.

Existing law provides that, except as authorized by law, every person who possesses not more than 28.5 grams of marijuana, other than concentrated cannabis, is guilty of a misdemeanor, punishable by a fine of not more than \$100, and if that person has been previously convicted 3 or more times of that offense during the previous 2 years and has been found guilty of the current offense after a trial, or has admitted guilt, the person is eligible for diversion, as specified.

This bill would instead provide that (a) except as authorized by law, every person who possesses not more than 28.5 grams of marijuana, other than concentrated cannabis, is, for the first offense, guilty of an infraction, punishable by a fine not to exceed ~~\$100~~ \$250, and is, for the 2nd or any subsequent offense, guilty of an infraction or a misdemeanor, punishable by a fine not to exceed ~~\$100~~ \$250; and (b) if that person has been previously convicted 2 or more times of that offense during the previous 2 years, the person is eligible for diversion, as specified. The

bill would make conforming changes to related provisions. To the extent that this bill would increase the duties of local officers by providing for the diversion of offenders after a 2nd rather than 3rd offense, this bill would impose a state-mandated local program upon local governments.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement, including the creation of a State Mandates Claims Fund to pay the costs of mandates that do not exceed \$1,000,000 statewide and other procedures for claims whose statewide costs exceed \$1,000,000.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. Section 11357 of the Health and Safety Code is
2 amended to read:

3 11357. (a) Except as authorized by law, every person who
4 possesses any concentrated cannabis shall be punished by
5 imprisonment in the county jail for a period of not more than one
6 year or by a fine of not more than five hundred dollars (\$500), or
7 by both that fine and imprisonment, or shall be punished by
8 imprisonment in the state prison.

9 (b) (1) Except as authorized by law, every person who
10 possesses not more than 28.5 grams of marijuana, other than
11 concentrated cannabis, is, for the first offense, guilty of an
12 infraction punishable by a fine not to exceed ~~one hundred dollars~~
13 ~~(\$100)~~ *two hundred fifty dollars (\$250)*, and is, for the second or
14 any subsequent offense, guilty of an infraction or a misdemeanor
15 punishable by a fine not to exceed ~~one hundred dollars (\$100)~~ *two*
16 *hundred fifty dollars (\$250)*.

17 (2) Notwithstanding other provisions of law, if that person has
18 been previously convicted two or more times of an offense
19 described in this subdivision during the two-year period



1 immediately preceding the date of commission of the violation to
2 be charged, the previous convictions shall also be charged in the
3 accusatory pleading. If the defendant is charged with a
4 misdemeanor, the provisions of Sections 1000 to 1000.5,
5 inclusive, of the Penal Code shall apply to the matter. In any case
6 in which a person is arrested for a violation of this subdivision and
7 does not demand to be taken before a magistrate, the person shall
8 be released by the arresting officer upon presenting satisfactory
9 evidence of identity and giving a written promise to appear in
10 court, as provided in Section 853.6 of the Penal Code, and shall not
11 be subjected to booking.

12 (c) Except as authorized by law, every person who possesses
13 more than 28.5 grams of marijuana, other than concentrated
14 cannabis, shall be punished by imprisonment in the county jail for
15 a period of not more than six months or by a fine of not more than
16 five hundred dollars (\$500), or by both that fine and imprisonment.

17 (d) Except as authorized by law, every person 18 years of age
18 or over who possesses not more than 28.5 grams of marijuana,
19 other than concentrated cannabis, upon the grounds of, or within,
20 any school providing instruction in kindergarten or any of grades
21 1 through 12 during hours the school is open for classes or
22 school-related programs is guilty of a misdemeanor and shall be
23 punished by a fine of not more than five hundred dollars (\$500),
24 or by imprisonment in the county jail for a period of not more than
25 10 days, or both.

26 (e) Except as authorized by law, every person under the age of
27 18 who possesses not more than 28.5 grams of marijuana, other
28 than concentrated cannabis, upon the grounds of, or within, any
29 school providing instruction in kindergarten or any of grades 1
30 through 12 during hours the school is open for classes or
31 school-related programs is guilty of a misdemeanor and shall be
32 subject to the following dispositions:

33 (1) A fine of not more than two hundred fifty dollars (\$250),
34 upon a finding that a first offense has been committed.

35 (2) A fine of not more than five hundred dollars (\$500), or
36 commitment to a juvenile hall, ranch, camp, forestry camp, or
37 secure juvenile home for a period of not more than 10 days, or
38 both, upon a finding that a second or subsequent offense has been
39 committed.

1 SEC. 2. Section 23222 of the Vehicle Code is amended to
2 read:

3 23222. (a) No person shall have in his or her possession on
4 his or her person, while driving a motor vehicle upon a highway
5 or on lands, as described in subdivision (b) of Section 23220, any
6 bottle, can, or other receptacle, containing any alcoholic beverage
7 which has been opened, or a seal broken, or the contents of which
8 have been partially removed.

9 (b) (1) Except as authorized by law, every person who
10 possesses, while driving a motor vehicle upon a highway or on
11 lands, as described in subdivision (b) of Section 23220, not more
12 than 28.5 grams of marijuana, other than concentrated cannabis as
13 defined by Section 11006.5 of the Health and Safety Code, is, for
14 a first offense, guilty of an infraction punishable by a fine of not
15 more than ~~one hundred dollars (\$100)~~ *two hundred fifty dollars*
16 *(\$250)*, and is, for the second or any subsequent offense, guilty of
17 an infraction or a misdemeanor punishable by a fine of not more
18 than ~~one hundred dollars (\$100)~~ *two hundred fifty dollars (\$250)*.

19 (2) Notwithstanding any other provision of law, if the person
20 has been previously convicted two or more times of an offense
21 described in this subdivision during the two-year period
22 immediately preceding the date of commission of the violation to
23 be charged, the previous convictions shall also be charged in the
24 accusatory pleading.

25 (3) If the defendant is charged with a misdemeanor, the
26 provisions of Sections 1000 to 1000.5, inclusive, of the Penal Code
27 shall apply to the matter.

28 (4) In any case in which a person is arrested for a violation of
29 this subdivision and does not demand to be taken before a
30 magistrate, the person shall be released by the arresting officer
31 upon presentation of satisfactory evidence of identity and giving
32 his or her written promise to appear in court, as provided in Section
33 40500, and shall not be subjected to booking.

34 SEC. 3. Notwithstanding Section 17610 of the Government
35 Code, if the Commission on State Mandates determines that this
36 act contains costs mandated by the state, reimbursement to local
37 agencies and school districts for those costs shall be made pursuant
38 to Part 7 (commencing with Section 17500) of Division 4 of Title
39 2 of the Government Code. If the statewide cost of the claim for
40 reimbursement does not exceed one million dollars (\$1,000,000),

- 1 reimbursement shall be made from the State Mandates Claims
- 2 Fund.

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